

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

HEATHER BIRD,

Plaintiff,

v.

BOROUGH OF MOOSIC, et al.,

Defendants.

CIVIL ACTION NO. 3:18-cv02289

(SAPORITO, M.J.)

FILED
WILKES BARRE
DEC 15 2020
PER MS
DEPUTY CLERK

AMENDED ORDER

AND NOW, this 15th day of December, 2020, in accordance with the accompanying Memorandum and for the same reasons stated in our prior Memorandum of November 24, 2020 (Doc. 83), **IT IS HEREBY ORDERED THAT:**

1. Our Order of November 24, 2020 (Doc. 84) is **VACATED** and **SUPERSEDED** by this Amended Order;

2. The defendants' motion to dismiss or to strike the plaintiff's second amended complaint (Doc. 69) is **GRANTED in part and DENIED in part;**

3. The plaintiff's § 1983 municipal liability claims against the Borough of Moosic *based on a failure to train theory*, set forth in Counts I and II of the second amended complaint (Doc. 63) are **DISMISSED**

with prejudice for failure to state a claim upon which relief can be granted, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure;

4. The plaintiff's state-law *quo warranto* claim against the Borough of Moosic, set forth in Count III of the second amended complaint (Doc. 63) is **DISMISSED with prejudice** for failure to state a claim upon which relief can be granted, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure;

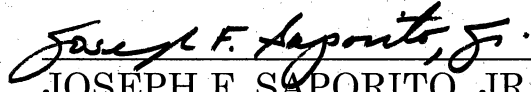
5. The plaintiff's § 1983 retaliation claims against Chief Janesko (Counts I and II), her § 1983 municipal liability claims against the Borough *based on Mayor Segilia's ratification of Chief Janesko's allegedly retaliatory conduct* (Counts I and II), her Title VII and PHRA claims against the Borough (Count IV), and her PHRA claims against Chief Janesko (Count V) shall be permitted to proceed;

6. The defendants' answer to the second amended complaint (Doc. 91) shall be **DEEMED** timely filed;

7. The plaintiff's motion to strike the answer to the second amended complaint (Doc. 92) is **DENIED**; and

8. The defendant is granted leave to file an amended answer to

the second amended complaint **within seven (7) days** of this Order.¹


JOSEPH F. SAPORITO, JR.
United States Magistrate Judge

¹ The defendants, of course, are free to stand on the pleading as filed, if they so choose.